

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA
Plaintiff,

V.

KEVIN DANIELS
Defendant.

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CRIMINAL NO. A-08-CR-285 LY

SENTENCING MEMORANDUM

TO THE HONORABLE LEE YEAKEL, UNITED STATES DISTRICT JUDGE FOR THE
WESTERN DISTRICT OF TEXAS:

Kevin Daniels, defendant, files this Sentencing Memorandum, and would show as follows:

I.

A TROUBLED CHILDHOOD

Growing up without a father virtually ensures that a male child will have face difficulties becoming a productive member of society. The statistics in support of this conclusion are overwhelming.¹ While some of the sources promulgating these statistical conclusions may be

¹ 63% of youth suicides are from fatherless homes (Source: U.S. D.H.H.S., Bureau of the Census
90% of all homeless and runaway children are from fatherless homes
85% of all children that exhibit behavioral disorders come from fatherless homes (Source: Center for Disease Control)
80% of rapists motivated with displaced anger come from fatherless homes (Source: Criminal Justice & Behavior, Vol 14, p. 403-26, 1978.)
71% of all high school dropouts come from fatherless homes (Source: National Principals Association Report on the State of High Schools.)
75% of all adolescent patients in chemical abuse centers come from fatherless homes (Source: Rainbows for all Gods Children.)
70% of juveniles in state-operated institutions come from fatherless homes (Source: U.S. Dept. of Justice, Special Report, Sept 1988)
85% of all youths sitting in prisons grew up in a fatherless home (Source: Fulton Co. Georgia jail populations, Texas Dept. of Corrections 1992

“open” to criticism, it seems there can be little doubt that males growing up without a father are guaranteed to have difficulty assimilating productively into society. Kevin Daniels is no exception. Kevin’s alcoholic and abusive father left the family when Kevin was only two years old.² This left Kevin’s mother, Barbara Kaatz, to work long hours in support of her family. Like so many single mothers, Ms. Kaatz struggled with providing the maternal nurturing that all boys need with providing financially for her family. Ms. Kaatz’s demanding hours as a waitress left Kevin and his two older sisters home alone with little supervision and even less discipline.³ With little supervision, Kevin was introduced to drugs and alcohol use as a young teenager. Around the age of fifteen, a boyfriend of one of Kevin’s sisters introduced Kevin to methamphetamine (hereinafter referred to as “meth”). Predictably and tragically, Kevin’s life would forever be defined by an addiction to meth.

This Honorable Court is well aware of the growing problem of meth addiction in Central Texas. Kevin, like many meth addicts, did not set out to be a meth addict or to destroy his life. The disastrous consequences of Kevin’s meth addiction are the effect of the vicious cycle of a meth habit. For meth users like Kevin, meth use starts out as a means of averting emotional and/or physical pain by providing the user with a temporary escape from life’s uncomfortable realities. Almost instantly, however, permanent meth use becomes an unavoidable reality.

II.

A CRY FOR HELP

For a meth addict like Kevin, admitting an addiction and desiring help can prove difficult. However painful this may be, it must be acknowledged as the first gradient to overcoming the

² See Exhibit A: Letter from mother, Barbara Kaatz and Exhibit B: Letter from aunt, Charlotte Craig

³ See Exhibit C: Letter from sister, Patty Coon

problem. As the attached letters of support and Kevin's previous admissions to the Government and admissions in open-court during the entry of his plea agreement indicate, Kevin has acknowledged his meth addiction and is seeking this honorable court's help in conquering his addiction through a substantive treatment program.

III.

A PROMISING FUTURE

It has been often said, when an individual is incarcerated, the first day of incarceration should be the first day in which a plan for reentry is begun for that individual. If a person enters prison with a substance abuse problem and no treatment or counseling is provided to assist in changing past behavior, that person will leave prison worse off than when he entered. Several factors indicate Kevin has a strong likelihood of success upon completion of his incarceration term. First, Kevin has recognized and accepts his meth addiction. More importantly, Kevin has repeatedly asked for assistance in receiving substantive drug treatment. Secondly, Kevin has the support of family and friends who have written letters elaborating on Kevin's kindness and generosity toward others.⁴ Finally, Kevin has taken full advantage of all treatment options made available to him while at Bastrop County Jail over the five months of his incarceration. Kevin's weekly attendance of AA meetings over the last five months demonstrates that he is committed to drug treatment.⁵

⁴ See Exhibit D: Letter from Aunt, Syndie Gonzales, See Exhibit E: Letter from friend, Angela Krutchen and Exhibit F: Letter from friend, ShawnaBurnett.

⁵ Undersigned Counsel consulted with the Bastrop County Jail concerning Kevin's attendance at AA meetings. While the Jail does not offer a drug treatment program, Kevin has attended AA meetings once a week during his incarceration.

IV.

THE APPROPRIATE SENTENCE

On October 28, 2008, the Defendant entered into a plea agreement wherein he pled guilty to Count One of the Indictment, charging him with Possession With Intent to Distribute a Controlled Substance, specifically, intent to distribute 50 grams or more of methamphetamine, its salts, isomers, or salt of its isomers, a controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(viii). The Defendant further pled guilty to Count Three of the Indictment, charging him with Unlawful Possession of a Firearm by a Felon, in violation of Title 18, United States Code, Section 922(g)(1). The United States, in turn, agreed to move to dismiss, after sentencing, Court Two of the Indictment. In addition, the United States agreed to amend its Enhancement Notice pursuant to Title 21, so that it will reflect only one prior drug trafficking conviction. Finally, in relevant part, the parties agreed that the Relevant Conduct for Count One included approximately 82.3 grams of methamphetamine.

In consideration of the plea agreement in this case the base offense level is 32 for Defendant's plea of guilt to Count One of the Indictment, and two additional points for his plea of guilt to Count Three of the Indictment, leaving Defendant with a base offense level of 34. Defendant's criminal history points total 13. However, a closer look reveals that four points of the total are comprised of driver's license related offenses stemming from his inability to afford monetary penalties. As such, Defendant respectfully asks the Court to consider analyzing a below guideline sentence in part based on criminal history points of 9 and not 13. If Defendant's criminal history points were seen as nine points then his criminal history category would be Category IV and not Category VI. Based on an offense Level of 31, after a three point reduction

for “acceptance of responsibility”, Defendant would be facing a guideline sentence of 151 to 188 months.

Defendant respectfully asks this Honorable Court to consider a below the guideline sentence in light of Defendant’s lifelong addiction to meth, his acceptance of responsibility in this case, his manifested desire to seek substantive drug treatment and his assistance to authorities. Defendant would greatly appreciate the opportunity to participate in a Federal Bureau of Prisons 500 hour drug treatment program, even though, after pleading to Count Three of the Indictment, he will not receive a reduction in his incarceration time. However, in light of the above-referenced factors and Defendant’s cooperation in pleading guilty to Count Three of the Indictment, Defendant respectfully prays this Honorable Court would consider a sentence of imprisonment in the range of 100 to 121 months. A sentence in this range would not only ensure that Defendant is punished proportionately for his crime, but, that upon receiving proper treatment, become a productive and health member of society upon his release.

Respectfully submitted,

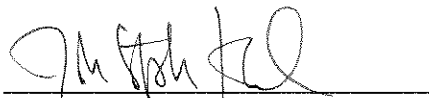
TOLAND LAW FIRM, P.C.

818 W. 10th Street

Austin, Texas 78701

Tele: (512) 460-3090

Facsimile: (512) 477-5294

A handwritten signature in black ink, appearing to read "John Stephen Toland", written over a horizontal line.

John Stephen Toland

State Bar No. 24029863

ATTORNEY FOR DEFENDANT

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To Whom It May Concern:

I am writing in regards to Kevin Daniels. Kevin is my son.

I understand that he has done wrong, but I feel that what he needs more than prison is some form of drug rehabilitation. Each time he has been in trouble it has involved drugs. But as far as I know he has served time in prison, but has never had any form of rehab.

Of course being his mother I naturally do not want my son to be locked up. It breaks my heart. I just want him home with his family we all love and miss him very much. He has children and a fiance who need him also. I truly think that given another chance Kevin can lead a better life and be a productive part of society. Kevin also is basically a kind loving person.

I realize considering the charges against him that those who only know him from the trouble he is in may not understand or believe this. But I swear to God that there is a better side to him. Please try to give him a chance while he is still young and able to work to prove this.

Thank you

Barbara Katz

To Whom It May Concern:

I am writing on behalf of my brother Kevin Wayne Daniels. I would like to start out by saying he is a wonderful man just has had a lot problems and no way to really fix them. He grew up with out a father being much part of his life. Though my mother tried she was never able to discipline us because she was always working. She was a single mother and worked as a waitress to take care of us which left us home alone a lot. I being the oldest usually looked after him and my younger sister but I wasn't much disciplined either. As we all grew up things just seemed to go wrong especially for my brother. I feel that the things he has done was not do to being a bad person but more to having an addiction to drugs and alcohol. We have already seen that doing time in prison does not help with these addictions. There is no program behind those walls that will rehabilitate him. I believe that if he was to receive rehab (preferably in patient) that he could become a productive citizen and be of value to the world as he is valuable to his family. Kevin has lots of work skills. He can do tile work, any kind of construction you can think of and any other thing he puts his mind to. So I am asking no begging for my brother's sake please take pity on him and allow him into rehab and not prison time.

Thank you

Patty Coon

December 7, 2008

RE: Kevin Wayne Daniels

Your Honor:

I'm writing this letter on behalf of my nephew Kevin. I ask that you consider sending Kevin to a rehabilitation place, not prison. I deeply feel that prison is not the answer. I am not asking for Kevin to be excused from his crime. I understand and so does he, that he did wrong, and there are payments to be made for the wrong.

Kevin needs help and again prison will not provide the type of help that he needs. Kevin does have the support of his family behind him, and we all are praying for him.

I could go into Kevin's trouble background such as an alcoholic father who was never there for him. His mother did the best she could with three children, and very little support from Kevin's father. However, I feel you have heard all of this before, and I believe and I think Kevin is learning that regardless of our background, or what life throws at us, we are responsible for ourselves, not what has happen to us.

In closing, I pray you will consider my request, and do what you feel is right in your heart.

Thank you.



Charlotte Craig
7803 Epping Lane
Austin, TX 78745

December. 05, 2008
Friday

Your Honor Sir,

I am writting to you with concern of my nephew Kevin Daniels. I know why he is there and I feel Kevin although Confused at this time needs time to heal himself and really needs to be in a Drug Rehab program. Alot of people these days as Kevin get put up and then mess up because they dont understand - they dont get it. The locked up time just means time away - but he really needs to be in treatment so he can and will understand the real harm in himself as others.

Your Honor Sir, again I ask please give Kevin the kind of real help he needs.

Sincerely,
Syndie Gonzales
Kevin Daniels Aunt.

November 30, 2008

To the Honorable Judge Yeakel,

I, Angela Kruchten, am writing on behalf of my dear friend, Kevin Daniels. I had the good fortune of meeting Kevin through a mutual friend four years ago. I knew, almost immediately, that Kevin would be a friend of mine for life. Kevin has welcomed me into his family and has become like a brother to me. I truly admire his optimism and value his perspective. Everywhere Kevin goes, it seems that people are drawn to his care free spirit and fun loving demeanor. I know I can always count on him to cheer me up when I'm having a rough day. He is so generous and kind hearted. I cannot count the number of times I've seen him give unselfishly to his family, friends and even strangers in need of the basic necessities such as food. Anyone that knows him knows that he is honest, loyal and a man of integrity. I am so blessed to have met Kevin and honored to call him my close friend. In the brief amount of time I have known Kevin, he has made a tremendous impact in my life. I am so thankful for him and his family. When I first met Kevin, I never would have believed the struggles he has gone through because he is always so upbeat and seems to find the good in every situation. In fact, I cannot recall a time when he wasn't smiling. His laughter and smile are infectious and I find it truly remarkable that he remains so optimistic even in his most trying of times. Above all, Kevin is an honorable man. He always speaks the truth and takes responsibility for his own actions no matter what. Kevin never blames others for his problems nor does he speak negatively about others even when they have hurt him or done wrong by him. I find this most commendable about his character.

Kevin has been such a positive influence to me and has changed my life through his support and friendship. To Kevin, I owe conquering my greatest fear and the amazing experience that came with it. My entire life, I have been afraid of swimming in natural bodies of water and especially of the ocean. Last September, my boss, and owner of the company I work for, gave me a trip to the Cayman Islands for my 10 year anniversary in appreciation for my hard work and dedication. She knew that the two things I really loved were traveling and the beauty of coral reefs and it's wildlife. I was ecstatic and touched by her gift but also terrified about my upcoming journey. When I confided in Kevin about it, he was so sweet and encouraging. In the months to come, Kevin seemed to make it his personal mission to help me conquer my fear and to experience the breath taking beauty of a coral reef first hand. He was so understanding and through humor, encouragement and educating me on various aspects of the ocean and

snorkeling, he helped me overcome my fear. The entire experience was so gratifying and truly unbelievable. I owe it all to this great man. My only regret is that he was not there to see the sense of accomplishment and joy it brought me. I don't think he even knows or understands the amount of impact he has on those around him. It just comes naturally to him. He encompasses all the redeeming and admirable qualities that I believe are most important in life.

I understand that Kevin has been charged with possession of a controlled substance and the seriousness of the crime he has committed. Kevin has expressed remorse for his actions and poor judgement. I believe he is sincere when he assures me that he will never put himself in this situation again. He has told me that nothing, in this world, is worth being separated from the people he loves and cares about. I believe the hardest part for him may be the fact that he has let down people that depended on him and he cannot be there for them when they really need him most. Everyone makes mistakes in their lifetime and as a result must face the consequences. What, I believe, is most important is what one does with that experience. Kevin has accepted responsibility for his actions and has learned a great deal from this experience. When deciding his punishment, I ask that you take in to consideration all of his positive attributes and try to utilize his many talents in a way that will positively affect both him and the community we live in. In my opinion, it would be a shame to not put his outstanding qualities to good use in an effort to change the lives of others. Kevin is very good with kids and he genuinely adores them. I believe it would be a great benefit for all parties involved, if Kevin was given an opportunity to work with and mentor our youth. As part of his sentence, rather than passing time incarcerated in prison, it would be beneficial if there was a way he could work with a juvenile detention center or a similar facility in an effort to give back to the community. Kevin is an amazing man with so many capabilities to make a difference in our society. He inspires people and, I believe, could help young people to help prevent them from making the same mistakes he has. He is very dear to me and holds a special place in my life and in my heart. Although his situation is unfortunate, I believe that we can make the most of it and turn it in to something very positive, not only for himself but for the community we live in as well.

Sincerely,



Angela Kruchten

Dec. 15, 2008

Honorable Judge and Members of the court:

My name is Shauna Burnett and I am 32 years of age. I currently reside in Austin, TX where I have made my home since 2000. I work as a healthcare & personal assistance provider for 2 predominant families here in Austin, one in which I have worked for since 1997 and actually transferred from Oklahoma with them to continue their care and the other for 3 years now.

I have known Kevin W. Daniels for the past 3 years. We have shared in a variety of activities such as parties, sports, family get togethers. I have known Kevin to be conscientious, considerate, generous, hardworking and a loyal, caring person. The entire time I have known Kevin he has been involved with a woman he deeply cared for and became a father figure for her 4 children.

He thought of the children as his own and he did his best to provide for them in every way possible. I have found that he will do anything within his power to help out his friends and he has become one of my dearest & truest friends.

I am aware of the current charges he has and the offenses he is being evaluated on now. I feel that he got caught up in a situation stemming from trying to be a "provider" that eventually lead him to make many bad decisions and mistakes. I feel he had a disadvantage in today's society due to his background, regarding honest employment, therefore leaving him to choose poorly out of necessity and desperation to survive. I have talked and visited with Kevin on numerous occasions since he has been charged, and I really feel he is remorseful for a place to reside. He wants to take advantage of the education courses provided to him to prepare for a career or trade. He states that his decisions have

and regrets many things he's done. He has shared with me his ideas on how he wants to prepare himself for his release so that he can lead a more honest life. For example, he plans to work hard and save his earnings to have some saved when released to find a place to reside. He wants to take advantage of the education courses provided to him to prepare for a career or trade. He hates that his decisions have left his girlfriend and her children in need and whatever he can do to better himself, for a better future, he desires to do; for their sake and his own. I believe if he could do it over he would have made many better decisions & done a lot differently. I feel that he lacked the proper rehabilitation & wasn't prepared in the past for what he faced upon release so he fell into.

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what was familiar and easy.
However, with the proper guidance,
mentals training, I believe he
would 'stay out of' trouble and
develop a honest, upstanding
future for himself if given the
opportunity. He is a wonderful
person who made some wrong
decisions but ultimately is a
decent, honest and loving individual;
given the opportunity he would
lead a very different life.

If you require anything further please
contact me @ (512) 775-2024. Thank you.

Sincerely,
Shawna Burnett
13145 N. US Hwy 183
Austin, TX 78750